

**BOARD OF COUNTY COMMISSIONERS  
Agenda Item Summary**

**IDA**

**Time Certain - 2:30 PM**

**Meeting Date** June 18, 2003 **Division** County Attorney

**AGENDA ITEM WORDING**

Public hearing for the approval of an IDA Resolution to issue an IDA Health Care Facilities Revenue Bond for \$2,500,000.

**ITEM BACKGROUND**

**PREVIOUS RELEVANT BOCC ACTION**

**CONTRACT/AGREEMENT CHANGES**  
N/A

**STAFF RECOMMENDATIONS**

Approval.

**TOTAL COST** **BUDGETED** Yes No

**COST TO COUNTY** **SOURCE OF FUNDS**

**APPROVED BY:** County Attorney ☒ OMB/Purchasing ☐ Risk Management ☐

**DIVISION DIRECTOR APPROVAL:**

  
J. R. COLLINS

**DOCUMENTATION:** Included ☐ To Follow ☐ Not Required ☐

**AGENDA ITEM #**

42

**RESOLUTION NO. \_\_\_\_\_ 2003**

**A RESOLUTION BY THE MONROE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, PROVIDING FOR THE ISSUANCE BY THE AUTHORITY OF NOT EXCEEDING \$2,500,000 INITIAL AGGREGATE PRINCIPAL AMOUNT OF HEALTH CARE FACILITIES REVENUE BOND (THE GUIDANCE CLINIC OF THE MIDDLE KEYS, INC. PROJECT), SERIES 2003 AND FOR A LOAN BY THE AUTHORITY TO THE GUIDANCE CLINIC OF THE MIDDLE KEYS, INC. IN AN AMOUNT EQUAL TO THE PRINCIPAL AMOUNT OF SUCH BOND TO REFINANCE CERTAIN OUTSTANDING INDEBTEDNESS OF SUCH CORPORATION AND TO FINANCE CERTAIN CAPITAL IMPROVEMENTS TO THE CORPORATION'S HEALTH CARE FACILITIES; PROVIDING FOR THE RIGHTS OF THE OWNER OF SUCH BOND AND FOR THE PAYMENT THEREOF; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH BOND; DELEGATING TO THE CHAIRMAN OF THE AUTHORITY THE RIGHT TO APPROVE A NEGOTIATED SALE OF SUCH BOND UPON SATISFACTION OF THE CONDITIONS TO SUCH SALE SET FORTH HEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT AND LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF THE BOND AND ALL OTHER RELATED INSTRUMENTS AND CERTIFICATES; PROVIDING FOR OTHER MISCELLANEOUS MATTERS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** The Guidance Clinic of the Middle Keys, Inc. (the "Company"), a Florida notforprofit corporation, has applied to the Monroe County Industrial Development Authority (the "Authority") to issue its private activity tax-exempt revenue bond in an initial aggregate principal amount not to exceed \$2,500,000 (as more particularly described herein, the "Series 2003 Bond") for the principal purposes of (i) refinancing certain outstanding indebtedness of the Company (as more particularly described herein, the "Prior Indebtedness"), the proceeds of which were used to finance the acquisition, construction and equipping of a mental health and substance abuse treatment center (collectively and as more particularly described herein, the "Facilities"), (ii) financing certain capital improvements to the Facilities (as more particularly described herein, the "Improvements"), and (iii) paying certain costs and expenses associated with the issuance of the Series 2003 Bond; and

**WHEREAS,** the Company has requested that the Authority loan the proceeds of the Series 2003 Bond to said Company pursuant to Chapter 159, Parts II and III, Florida Statutes or such other provision or provisions of

Florida law as the Authority may determine advisable (the "Act") in order to accomplish the foregoing; and

**WHEREAS**, the issuance of the Series 2003 Bond under the Act in an aggregate principal amount of not exceeding \$2,500,000 and the loaning of the proceeds thereof to the Company for the purposes stated herein under the hereinafter defined Loan Agreement which will provide that payments thereunder be at least sufficient to fully pay the principal of and interest and redemption premium, if any, on such Series 2003 Bond and such other costs in connection therewith as may be incurred by the Authority, will assist the Company and promote the public purposes provided in the Act; and

**WHEREAS**, the Company has submitted the Memorandum of Agreement (the "Memorandum of Agreement") relating to the issuance of the Series 2003 Bond, attached hereto as Exhibit A; and

**WHEREAS**, in order to satisfy certain of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Authority held a public hearing on the date hereof prior to the adoption of this resolution on the proposed issuance of the Series 2003 Bond for the purposes herein stated, which date was more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in Monroe County, Florida (a true and accurate copy of the proof of publication of such notice is attached hereto as Exhibit C), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Series 2003 Bond and the location and nature of the Facilities; and

**WHEREAS**, the Company has finalized the structure of its proposed financing and has requested the Authority's approval for the issuance of the Series 2003 Bond, including the terms thereof, upon full satisfaction of the terms hereof; and

**WHEREAS**, it is intended that this Resolution shall constitute official action toward the issuance of the Series 2003 Bond within the meaning of the applicable United States Treasury Regulations in addition to any other action that may have heretofore been taken by the Company;

**WHEREAS**, it is not reasonably anticipated that more than \$10,000,000 of tax-exempt obligations as defined under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), will be issued by the Authority in calendar year 2003; now, therefore

**BE IT RESOLVED BY THE MONROE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Act.

**SECTION 2. DEFINITIONS.** Unless the context otherwise requires, the terms used in this Resolution shall have the meanings specified in this section. Words importing the singular shall include the plural, words importing the plural shall include the singular, and words importing persons shall include corporations and other entities or associations.

**"Act"** means the Florida Industrial Development Financing Act, Parts II and III, Chapter 159, Florida Statutes, and other applicable provisions of law.

**"Authority"** means the Monroe County Industrial Development Authority, a public body corporate and politic and an industrial development authority organized and existing under the Constitution and laws of the State including, particularly, the Act, its successors and assigns.

**"Bank"** means Orion Bank, a state of Florida banking corporation, its successors and assigns.

**"Bond Counsel"** means the law firm of Nabors, Giblin & Nickerson, P.A., Tampa, Florida.

**"Chairman"** shall mean the Chairman of the Authority, or such other person or persons who are authorized to act on his or her behalf.

**"Company"** means The Guidance Clinic of the Middle Keys, Inc., a Florida not-for-profit corporation, and any successor, surviving, resulting or transferee entity as provided in the Loan Agreement.

**"County"** means Monroe County, Florida, a political subdivision of the State.

**"Facilities"** means the Facilities of the Company described in subsection E(1) of Section 3 of this Resolution and in the Loan Agreement which were acquired, constructed and equipped in the County and were financed, in part, with proceeds of the Prior Indebtedness. The Facilities shall include the Improvements.

**"Improvements"** means a new telephone system and air conditioning units to be acquired by the Company and installed in the Facilities.

**"Loan Agreement"** means the Loan Agreement, to be executed by and among the Authority, the Company and the Bank, substantially in the form attached hereto as Exhibit B and incorporated herein by reference.

**"Prior Indebtedness"** means, collectively, (i) that certain promissory note, number 1744593-3002, dated March 31, 2003, issued by the Company to the Bank, and (ii) that certain loan from the Osceola County Industrial

Development Authority to the Company pursuant to the Loan Agreement and Mortgage dated as of March 15, 1993, between the Company and the Osceola County Industrial Development Authority.

**"Secretary"** means the ex-officio secretary to the Authority, or such other person or persons who are authorized to act on his or her behalf.

**"Series 2003 Bond"** means the Authority's Health Care Facilities Revenue Bond (The Guidance Clinic of the Middle Keys, Inc. Project), Series 2003, to be issued pursuant to the Loan Agreement in accordance with the terms hereof and thereof in an aggregate initial principal amount of not exceeding \$2,500,000.

**"State"** means the State of Florida.

**SECTION 3. FINDINGS.** It is hereby ascertained, determined and declared as follows:

A. The Authority is a public body corporate and politic, a public instrumentality and an industrial development authority, and is duly authorized and empowered by the Act to finance or refinance the acquisition, construction, reconstruction, improvement, rehabilitation, renovation, expansion and enlargement, or additions to, furnishing and equipping of any capital projects, including any "projects" comprising any "health care facility" (as the quoted terms are described in the Act), including land, rights in land, buildings and other structures, machinery, equipment, appurtenances and facilities incidental thereto, and other improvements necessary or convenient therefor.

B. The Company previously incurred the Prior Indebtedness to finance a portion of the costs of acquiring, constructing and equipping the Facilities, which Facilities constitute a "health care facility," as defined under the Act. The Company has requested that the Authority issue the Series 2003 Bond in order to allow the Company to refinance the Prior Indebtedness and achieve certain debt service savings.

C. The Company has additional capital improvement needs in the form of the Improvements, which Improvements will be installed at the Facilities. The Company has requested that the Authority issue the Series 2003 Bond in order to allow the Company to finance a portion of the costs of the Improvements.

D. The refinancing of the Prior Indebtedness and the financing of the Improvements by the Authority through the issuance of the Series 2003 Bond, pursuant to the Act, will promote and preserve the economic development and health, welfare and safety of the citizens of Monroe County,

will provide and maintain the residents of the County with jobs, will promote the general economic structure of the County, and will otherwise serve the public purposes of the Act.

E. Upon consideration of the documents described herein and the information presented to the Authority at or prior to the adoption of this Resolution, the Authority has made and does hereby make the following findings and determinations:

(i) The Facilities consist of a mental health and substance abuse treatment center which include two buildings, one of which is one-story and approximately 15,488 square feet and the other is one-story and approximately 2,880 square feet. The Improvements include a new telephone system and air conditioning units that will become a part of the Facilities. The Facilities are located in the County and are owned and operated by the Company in its business of providing mental health care and substance abuse treatment in the County.

(ii) The Company has shown that the Facilities will enhance and improve the health, safety and welfare of the County and the State, and it will serve other predominantly public purposes as set forth in the Act. It is desirable and will further the public purposes of the Act, and it will most effectively serve the purposes of the Act, for the Authority to issue and sell the Series 2003 Bond for the purpose of providing funds to refinance the Prior Indebtedness and finance the Improvements, all as provided in the Loan Agreement, which contains such provisions as are necessary or convenient to effectuate the purposes of the Act.

(iii) The Facilities are appropriate to the needs and circumstances of, and will make a significant contribution to, the economic growth of the County; shall provide or preserve gainful employment; and shall serve a public purpose by advancing the economic prosperity, the public health, or the general welfare of the State and the County and their people as stated in Section 159.26, Florida Statutes.

(iv) Based solely on representations made by the Company and information provided to this Authority by the Company in compliance with the criteria established by the Act, the Company is fully capable and willing (a) to fulfill its obligations under the Loan Agreement and any other agreements to be made in connection with the issuance of the Series 2003 Bond and the use of the Series 2003 Bond proceeds for refinancing the Prior Indebtedness and financing all or a portion of the costs of the Improvements, including the obligation to make loan payments or other payments in amounts sufficient in the aggregate to pay all of the interest, principal, and redemption premiums, if any, on the Series 2003 Bond, in the amounts and at the times required, (b) to

operate, repair and maintain at their own expense the Facilities and all other health care facilities of the Company, if any, and (c) to serve the purposes of the Act and such other responsibilities as may be imposed under such agreements.

(v) The County and other local agencies will be able to cope satisfactorily with the impact of the Facilities and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair and maintenance of the Facilities and on account of any increase in population or other circumstances resulting therefrom.

(vi) Adequate provision is made under the Loan Agreement for the operation, repair and maintenance of the Facilities at the expense of the Company, for the payment of the principal of, premium, if any, and interest on the Series 2003 Bond when and as the same become due, and payment by the Company of all other costs in connection with the refinancing and financing, or the operation, maintenance and administration of the Facilities which are not paid out of the proceeds from the sale of the Series 2003 Bond or otherwise.

(vii) The costs of the Facilities to be refinanced and the costs of the Improvements to be financed from the proceeds of the Series 2003 Bond shall be "costs" of a "project" within the meaning of the Act.

(viii) The principal of, premium, if any, and interest on the Series 2003 Bond and all other pecuniary obligations under the Loan Agreement or otherwise, in connection with the issuance of the Series 2003 Bond, shall be payable solely from the loan payments and other revenues and proceeds received under the Loan Agreement or otherwise from the operation, sale, lease or other disposition of the Facilities and other operations of the Company, including proceeds from insurance condemnation awards and proceeds of any foreclosure or other realization upon the liens or security interests under the Loan Agreement and all other related security documents, the proceeds of the Series 2003 Bond and income from the temporary investment of the proceeds of the Series 2003 Bond or of such other revenues and proceeds, as pledged for such payment under the Loan Agreement. Neither the faith and credit nor the taxing power of the County, the State, the Authority or of any political subdivision or agency thereof is pledged to the payment of the Series 2003 Bond or of such other pecuniary obligations and neither the County, the State, the Authority nor any political subdivision or agency thereof shall ever be required or obligated to levy ad valorem taxes on any property within their territorial limits to pay the principal of, premium, if any, or interest on such Series 2003 Bond or other pecuniary obligations or to pay the

same from any funds thereof other than such revenues, receipts and proceeds so pledged, and the Series 2003 Bond shall not constitute a lien upon any property owned by the County, the Authority or the State or any political subdivision or agency thereof, other than the Authority's interest in the Loan Agreement and the property rights, receipts, revenues and proceeds pledged therefor under and as provided in the Loan Agreement and any other agreements securing the Series 2003 Bond.

(ix) A delegated negotiated sale of the Series 2003 Bond is desirable, and is in the best interest of the Authority and the Company, for the following reasons: the Series 2003 Bond will be special and limited obligations of the Authority payable solely out of revenues and proceeds derived by the Authority pursuant to the Loan Agreement and the other related security documents, and the Company will be obligated for the payment of all costs of the Authority in connection with the refinancing of the Prior Indebtedness and the financing of the Improvements which are not paid out of the Series 2003 Bond proceeds or otherwise; the cost of issuance of the Series 2003 Bond, which will be borne directly or indirectly by the Company could be greater if the Series 2003 Bond is sold at a public sale by competitive bids than if the Series 2003 Bond is sold on a negotiated basis, and a public sale by competitive bids would cause undue delay in the refinancing and financing; private activity revenue bonds having the characteristics of the Series 2003 Bond are typically and usually sold at negotiated sale or privately placed; and authorization of a delegated negotiated sale of the Series 2003 Bond is necessary in order to serve the purposes of the Act.

(x) The Company has, after consulting with the Bank, determined that market and other conditions are now conducive to proceed with the refinancing of the Prior Indebtedness and the financing of the Improvements with the proceeds of the Series 2003 Bond.

(xi) All requirements precedent to the adoption of this Resolution, of the Constitution and other laws of the State of Florida, including the Act, have been complied with.

#### **SECTION 4. DELEGATED NEGOTIATED SALE OF SERIES 2003 BOND AUTHORIZED AND DESCRIPTION OF THE SERIES 2003 BOND.**

(A) Subject in all respects to the satisfaction of the conditions set forth in Section 4(C) hereof, the Authority hereby authorizes the issuance of a Series of Bonds to be known as the "Monroe County Industrial Development Authority Health Care Facilities Revenue Bond (The Guidance Clinic of the Middle Keys, Inc. Project), Series 2003" in the initial aggregate principal amount of not exceeding \$2,500,000 for the principal purpose of providing



moneys to the Company to refinance the Prior Indebtedness, to finance a portion of the costs of the Improvements and to pay a portion of the costs and expenses related to the issuance of the Series 2003 Bond. The Series 2003 Bond shall be issued only in accordance with the provisions hereof and of the Loan Agreement and all the provisions hereof and of the Loan Agreement shall be applicable thereto.

(B) The Series 2003 Bond shall be dated the date of issuance, shall be issued in the form of one fully registered Bond without coupons in a denomination equal to the principal amount of the Series 2003 Bond and not exceeding \$2,500,000, shall bear interest from its dated date payable on the dates and at the rates and at the times and subject to redemption and purchase as to be set forth in the Loan Agreement.

(C) Subject in all respects to the satisfaction of the conditions set forth below, the Authority hereby finds and determines that the sale of the Series 2003 Bond on the basis of a negotiated sale rather than a public sale by competitive bid, pursuant to the terms and provisions hereof and of the Loan Agreement, is in the best interest of the Authority and the Company; and the Authority hereby further finds and determines that the reasons set forth in Section 3(E)(ix) hereof necessitate the sale of the Series 2003 Bond through a negotiated sale. A negotiated sale of the Series 2003 Bond with the Bank in accordance with the terms hereof and of the Loan Agreement is hereby in all respects authorized, approved, ratified and confirmed, and there shall be executed on behalf of the Authority and in furtherance thereof the Loan Agreement with the Bank and the Company. The Loan Agreement shall be executed on behalf of the Authority by its Chairman and attested by its Secretary in the form attached hereto as Exhibit B only upon satisfaction of all of the following conditions:

(1) Receipt by the Chairman of the Loan Agreement, executed by the Bank and the Company, substantially in the form of the Loan Agreement, providing for, among other things, (i) the issuance of not exceeding \$2,500,000 initial aggregate principal amount of Series 2003 Bond, (ii) an initial interest rate of not more than 6.00% per annum, and (iv) the maturity of the Series 2003 Bond not being later than January 1, 2019.

(2) Receipt by the Chairman from the Bank of a disclosure statement and truth-in-bonding information complying with Section 218.385, Florida Statutes.

**SECTION 5. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.** The Loan Agreement, substantially in the form attached hereto as Exhibit B with such corrections, insertions and deletions as may be approved by the Chairman of the Authority, such approval to be evidenced conclusively by his or her execution thereof, is hereby approved and authorized. Subject in all respects to the satisfaction of the conditions set forth in Section 4(C) hereof, the Authority hereby authorizes and directs

the Chairman to date and execute and the Secretary to attest the Loan Agreement, and to deliver the Loan Agreement to the Company and the Bank. All of the provisions of the Loan Agreement, when executed and delivered by the Authority as authorized herein and by the Company and the Bank, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 6. AUTHORIZATION OF EXECUTION AND DELIVERY OF MEMORANDUM OF AGREEMENT.** The Memorandum of Agreement, substantially in the form attached hereto as Exhibit A with such corrections, insertions and deletions as may be approved by the Chairman of the Authority, such approval to be evidenced conclusively by his or her execution thereof, is hereby approved and authorized. The Authority hereby authorizes and directs the Chairman to date and execute and the Secretary to attest the Memorandum of Agreement, and to deliver the Memorandum of Agreement to the Company. All of the provisions of the Memorandum of Agreement, when executed and delivered by the Authority as authorized herein and by the Company shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 7. PAYMENT OF THE SERIES 2003 BOND.** The Series 2003 Bond shall be payable as to principal and interest in lawful money of the United States of America at the designated office of the Bank in accordance with the Loan Agreement.

**SECTION 8. DESIGNATION OF THE SERIES 2003 BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION.** To the extent determined to be lawfully allowed by Bond Counsel to the Authority, the Authority hereby designates the Series 2003 Bond as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. This designation is based upon the findings of the Authority set forth in the final recital clause hereof.

**SECTION 9. AUTHORIZATION OF EXECUTION OF OTHER CERTIFICATES AND OTHER INSTRUMENTS.** Subject in all respects to the satisfaction of the conditions set forth in Section 4(C) hereof, the Chairman and the Secretary are hereby authorized and directed, either alone or jointly, to execute and deliver certificates of the Authority certifying such facts as the County Attorney or Bond Counsel shall require in connection with the issuance, sale and delivery of the Series 2003 Bond, and to execute and deliver such other instruments, including but not limited to, deeds, assignments, bills of sale, tax agreements and financing statements, as shall be necessary or desirable to perform the Authority's obligations under the Loan Agreement and to consummate the transactions hereby authorized.

**SECTION 10. NO PERSONAL LIABILITY.** No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Series 2003 Bond, the Loan Agreement or any assignment thereof, or any certificate or other instrument to be executed on

behalf of the Authority in connection with the issuance of the Series 2003 Bond, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any elected official, officer, employee or agent of the Authority in his or her individual capacity, and none of the foregoing persons nor any elected or appointed official of the Authority executing the Series 2003 Bond, the Loan Agreement or any certificate or other instrument to be executed in connection with the issuance of the Series 2003 Bond shall be liable personally thereon or be subject to any personal liability of or accountability by reason of the execution or delivery thereof.

**SECTION 11. NO THIRD PARTY BENEFICIARIES.** Except as otherwise expressly provided herein or in the Series 2003 Bond and the Loan Agreement nothing in this Resolution, or in the Series 2003 Bond or the Loan Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, corporation or other organization, other than the Authority, the Company and the Bank any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, or of the Series 2003 Bond and the Loan Agreement, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Authority, the Company and the Bank.

**SECTION 12. PREREQUISITES PERFORMED.** Subject in all respect to the satisfaction of the conditions set forth in Section 4(C) hereof, all acts, conditions and things relating to the passage of this Resolution, to the issuance, sale and delivery of the Series 2003 Bond, to the execution and delivery of the Loan Agreement, required by the Constitution or other laws of the State, to happen, exist and be performed precedent to the passage hereof, and precedent to the issuance, sale and delivery of the Series 2003 Bond, to the execution and delivery of the Loan Agreement, have either happened, exist and have been performed as so required or will have happened, will exist and will have been performed prior to such execution and delivery thereof.

**SECTION 13. RECOMMENDATION FOR APPROVAL TO BOARD OF COUNTY COMMISSIONERS.** The Authority hereby recommends the issuance of the Series 2003 Bond and the refinancing of the Prior Indebtedness and the financing of the Improvements for approval to the Board of County Commissioners of Monroe County (the "Board"). The Authority hereby directs the Chairman, at the expense of the Company, to cooperate in seeking approval for the issuance of the Series 2003 Bond and the refinancing of the Prior Indebtedness and the financing of the Improvements by the Board as the applicable elected representatives of Monroe County under and pursuant to the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended.

**SECTION 14. GENERAL AUTHORITY.** The members of the Authority and its directors, officers, attorneys, engineers or other agents or employees are hereby authorized to do all acts and things required of them by this

Resolution, the Series 2003 Bond, the Memorandum of Agreement and the Loan Agreement, and to do all acts and things which are desirable and consistent with the requirements hereof or of the Series 2003 Bond, the Memorandum of Agreement and the Loan Agreement, for the full, punctual and complete performance of all the terms, covenants and agreements contained herein and in the Series 2003 Bond, the Memorandum of Agreement and the Loan Agreement.

**SECTION 15. THIS RESOLUTION CONSTITUTES A CONTRACT.**

The Authority covenants and agrees that this Resolution shall constitute a contract between the Authority and the Bank and that all covenants and agreements set forth herein and in the Series 2003 Bond and the Loan Agreement, to be performed by the Authority shall be for the benefit and security of the Bank.

**SECTION 16. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions hereof or of the Series 2003 Bond issued under the Loan Agreement.

**SECTION 17. REPEALING CLAUSE.** All resolutions or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**SECTION 18. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** by the Monroe County Industrial Development Authority at a meeting of the Authority on this 18th day of June, 2003.

Mayor Spehar  
Mayor Pro Tem Nelson  
Commissioner McCoy  
Commissioner Neugent  
Commissioner Rice

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(SEAL)  
Attest: DANNY L. KOLHAGE, Clerk

MONROE COUNTY INDUSTRIAL  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Deputy Clerk

By \_\_\_\_\_  
Chairperson

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY ROBERT N. WOLFE  
DATE 6-6-03

**EXHIBIT A**  
**FORM OF MEMORANDUM OF AGREEMENT**

**MEMORANDUM OF AGREEMENT FOR ISSUANCE OF  
PRIVATE ACTIVITY REVENUE BONDS**

This Agreement between the Monroe County Industrial Development Authority, a public body corporate and politic and an industrial development authority under the laws of the State of Florida (the "Authority") and The Guidance Clinic of the Middle Keys, Inc. (the "Company"), a Florida not-for-profit Company.

**W I T N E S S E T H:**

1. Preliminary Statement. Among the matters of mutual understanding and inducement which have resulted in the execution of this Agreement are the following:

(a) Whereas Chapter 159, Parts II and III, Florida Statutes, (the "Act") provides that the Authority may issue tax-exempt revenue bonds and loan the proceeds thereof to one or more persons, firms or private corporations, for the acquisition, construction, equipping and installation of certain qualifying health care facilities and/or to refinance the costs related thereto.

(b) The Company is considering refinancing certain outstanding indebtedness (the "Prior Indebtedness"), the proceeds of which were used to acquire, construct and equip a mental health and substance abuse treatment center (the "Facilities") and to finance a portion of the costs of the acquisition and installation of a telephone system and air conditioning units for the Facilities (the "Improvements"), all of which is more fully described in Exhibit A attached hereto.

(c) The Authority intends this Agreement to constitute its official binding commitment, subject to the terms hereof, to issue its bond (the "Bond") in one or more series or issues pursuant to the Act in an amount to be agreed upon by the Authority and the Company and to loan the proceeds thereof to the Company to refinance the Prior Indebtedness and to finance a portion of the costs of the Improvements, including a portion of the costs and expenses incurred in connection with the issuance of the Bond, up to an amount not to exceed \$2,500,000.

(d) The Authority considers the issuance and sale of the Bond, for the purposes hereinabove set forth, consistent with the objectives of the Act. This commitment is an affirmative official action of the Authority toward the issuance of the Bond as herein contemplated in accordance with the purposes of both the Act and the applicable United States Treasury Regulations.

2. Undertakings on the Part of the Authority. Subject to the terms hereof, the Authority agrees as follows:

(a) The Authority will cooperate with the Company, Orion Bank (the "Bank") and Nabors, Giblin & Nickerson, P.A., bond counsel to the Authority with respect to the issuance and sale of the Bond ("Bond Counsel"), and will take such further action as shall be mutually satisfactory to the Authority and the Company for the authorization, issuance and sale of such Bond and the use of the proceeds thereof to refinance the Prior Indebtedness and finance a portion of the cost of the Improvements.

(b) Such actions and documents may permit the issuance from time to time in the future of additional Bond on terms which shall be set forth therein, whether *pari passu* with the Bond or otherwise, for the purpose of defraying the cost of completion, enlargements, improvements and expansions of the Facilities, or any segment thereof, or refunding of the Bond.

(c) The loan agreement and other financing documents (collectively, the "Financing Agreements") executed in connection with the issuance of the Bond shall, under terms agreed upon by the parties, provide for payments to be made by the Company in such sums as shall be necessary to pay the amounts required under the Act, including the principal of and interest and redemption premium, if any, on the Bond, as and when the same shall become due and payable.

(d) In authorizing the issuance of the Bond pursuant to this Agreement, the Authority will make no warranty, either expressed or implied, that the proceeds of the Bond will be sufficient to pay all costs of refinancing the Prior Indebtedness and financing the Improvements or that the Facilities or the Improvements are or will be suitable for the Company's purposes or needs.

(e) The Bond shall specifically provide that they are payable solely from the revenues derived from the Financing Agreements, except to the extent payable out of amounts attributable to Bond proceeds. The Bond and the interest thereon shall not constitute an indebtedness or pledge of the general credit of Monroe County, the State of Florida or any political subdivision or agency thereof, and such fact shall be plainly stated on the face of the Bond.

(f) Issuance of the Bond by the Authority shall be contingent upon compliance with all provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, including the approval thereof by the Board of County Commissioners of Monroe County in accordance with the provisions of Section 147(f) of the Code.

3. Undertakings on the Part of the Company. Subject to the terms hereof, the Company agrees as follows:

(a) The Company will use reasonable efforts to insure that the Bond in the aggregate principal amount as stated above is privately placed with the Bank; provided, however, that the terms

of such Bond and of the sale and delivery thereof shall be in compliance with the Authority's approving resolution adopted on June 18, 2003 (the "Resolution").

(b) Prior to the issuance of the Bond in the principal amount stated above, in one or more series or issues from time to time, the Company will enter into the Financing Agreements for the loan or use of the proceeds of the Bond to refinance the Prior Indebtedness and finance a portion of the costs of the Improvements. Such Financing Agreements will provide that the Company will be obligated to pay the Authority (or the holder of the Bond on behalf of the Authority, as the case may be) sums sufficient in the aggregate to enable the Authority to pay the principal of and interest and redemption premium, if any, on the Bond, as and when the same shall become due and payable, and all other expenses related to the issuance and delivery of the Bond.

(c) The Company shall, in addition to paying the amounts set forth in the Financing Agreements, pay all costs of operation, maintenance, taxes, governmental and other charges which may be assessed or levied against or with respect to the Facilities.

(d) To the extent not otherwise paid from Bond proceeds, the Company hereby agrees to pay all of the out of pocket expenses of officials and representatives of the Authority incurred in connection with the issuance of the Bond and will pay all fees and expenses of the Authority in accordance with its guidelines and of Bond Counsel.

(e) The Company will hold the Authority and Monroe County free and harmless from any loss or damage and from any taxes or other charges levied or assessed by reason of any mortgaging or other disposition of the Facilities.

(f) The Company agrees to indemnify and defend the Authority and Monroe County and hold the Authority and Monroe County harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the Facilities or the issuance of the Bond and the Company's undertaking thereof, or in any way growing out of or resulting from this Agreement including, without limitation, all costs and expenses of the Authority and Monroe County and reasonable attorneys' fees incurred in the enforcement of any agreement of the Company contained herein. In the event that the Bond is not issued and delivered, this indemnity shall survive the termination of this Agreement.

(g) The Company will take such further action as may be required to implement its aforesaid undertakings and as it may deem appropriate in pursuance thereof.

4. General Provisions. All commitments of the Authority under Section 2 hereof and of the Company under Section 3 hereof are subject to the conditions that all of the following events shall have occurred not later than December 31, 2003, or such other date as shall be mutually satisfactory to the Authority and Company:

(a) The Authority shall be lawfully entitled to issue the Bond as herein contemplated.



(b) Rulings satisfactory to the Company, the Authority and Bond Counsel as to such matters with respect to the Bond, the Facilities, the Financing Agreements and any other instrument or document, if specified by the Authority, Bond Counsel or the Company, shall have been obtained from the Internal Revenue Service and/or the United States Treasury Department and shall be in full force and effect at the time of issuance of the Bond.

(c) Such other rulings, approvals, consents, certificates of compliance, opinions of counsel and other instruments and proceedings satisfactory to the Company, the Authority and Bond Counsel as to such matters with respect to the Bond, the Facilities, the Financing Agreements and any other instrument or document, as shall be specified by the Company, the Authority or Bond Counsel, shall have been obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competent jurisdiction over or interest in matters pertinent thereto and shall be in full force and effect at the time of issuance of the Bond.

(d) Compliance with all applicable provisions of Chapters 159, 189, 215 and 218, Florida Statutes, relating to the issuance of the Bond, the interest rate thereon, the type of purchasers of the Bond and the terms on which the Bond may otherwise be issued.

(e) The Bond shall be sold in a private placement to the Bank in an increment of not less than the principal amount of the Bond.

If the events set forth in this Section 4 do not take place within the time set forth or any extension thereof, the Company agrees that it will reimburse the Authority for all the reasonable and necessary direct or indirect expenses which the Authority may incur at the Company's request arising from the execution of this Agreement and the performance by the Authority of its obligations hereunder, including legal fees and expenses for counsel to the Authority and Bond Counsel.

5. Binding Effect. All covenants and agreements herein contained by or on behalf of the Authority and the Company shall bind and inure to the benefit of the respective successors and assigns of the Authority and the Company whether so expressed or not.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their officers thereunder duly authorized as of the 18th day of June, 2003.

**MONROE COUNTY INDUSTRIAL  
DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

**THE GUIDANCE CLINIC OF THE MIDDLE  
KEYS, INC.**

(SEAL)

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY ROBERT WOLFE  
DATE 6-6-03

## **EXHIBIT A TO MEMORANDUM OF AGREEMENT**

### **DESCRIPTION OF FACILITIES AND IMPROVEMENTS**

The Prior Indebtedness consists of (i) that certain promissory note, number 1744593-3002, dated March 31, 2003, issued by the Company to the Bank, and (ii) that certain loan from the Osceola County Industrial Development Authority to the Company pursuant to the Loan Agreement and Mortgage dated as of March 15, 1993, between the Company and the Osceola County Industrial Development Authority.

The Facilities include a mental health and substance abuse treatment center which generally consist of two buildings, one of which is one-story and approximately 15,488 square feet and the other is one-story and approximately 2,880 square feet.

The Improvements include new telephone system and air conditioning units that will become a part of the Facilities.

**EXHIBIT B**  
**FORM OF LOAN AGREEMENT**